

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-26 (rev. 5), “NEPOTISM”
DECEMBER 1, 2010
TABLE OF CONTENTS

<u>SECTION</u>	PAGE NUMBER
<u>AUTHORITY</u>	1
<u>APPLICABILITY</u>	1
<u>EMPLOYMENT AT WILL CLAUSE</u>	1
<u>POLICY STATEMENT</u>	1
<u>DEFINITIONS</u>	1
<u>DISCUSSION</u>	3
<u>PROCEDURES</u>	
I. Nepotism	3
A. General Provisions	3
B. Nepotism Violations	3
1. Relatives of Texas Board of Criminal Justice (TBCJ) Members or the Executive Director	3
2. Relatives of a Correctional Institutions Division (CID) Regional Director	4
3. Relatives of a Warden, Assistant Warden, or Major	4
4. Relatives in the Chain of Supervision for a Position	4
II. Resolution of a Nepotism Violation	5
A. Action by Related Employees	5
B. Action by Warden, Department Head, or Higher Level of Authority	5
III. Exceptions	6
A. Employee Assignments Potentially Exempt from Nepotism Violation	6
B. No Other Qualified Eligible Applicants	6
Attachment A Nepotism Chart	
Attachment B PERS 581, Notification of Nepotism Violation (12/10)	



TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

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DATE: December 1, 2010
PAGE: 1 of 8
SUPERSEDES: PD-26 (rev. 4)
May 1, 2008

EXECUTIVE DIRECTIVE

SUBJECT: NEPOTISM

AUTHORITY: Texas Government Code §§ 492.003, 493.007, 493.008, 537.001-.084;
Texas Family Code § 2.401

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the executive director's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the TDCJ and **do not** create any legally enforceable interest or limit the executive director's, deputy executive director's, or division directors' authority to terminate an employee at will.

POLICY:

The TDCJ shall administer the provisions within this directive to ensure that the workplace is not disrupted by nepotism. The provisions of this directive shall be administered without regard to race, color, religion, gender, national origin, age, disability, genetic information, or uniformed services status. The TDCJ has zero tolerance for all forms of employment discrimination. No employee or applicant for employment shall be subjected to harassment or retaliation for opposing or reporting employment discrimination.

DEFINITIONS:

"Affinity" is being related by marriage. A husband and wife are related to each other in the first degree by affinity. A husband and wife are also related by affinity to individuals related to their spouse by consanguinity (blood), and the degree of relationship by affinity is the same as the degree of the underlying relationship by consanguinity. The ending of a marriage by divorce or

death ends relationships created by that marriage unless a child of the marriage is living, in which case, for the purpose of nepotism, the marriage is considered to continue as long as a child of that marriage lives.

“Chain of Supervision” includes an employee’s immediate or higher level supervisor and their supervisors up to the executive director. If an employee is in a dual-supervision position, the employee’s chain of supervision includes the administrative and technical supervisors who meet this definition. For the purposes of this directive, an employee who supervises a position on an intermittent or a temporary basis due to an unplanned or unscheduled event, such as a duty captain or an employee acting as temporary supervisor or warden due to the supervisor’s or warden’s illness or unavoidable absence, is not in the position’s chain of supervision.

“Consanguinity” is being related by blood. Two individuals are related to each other by consanguinity if one is a descendant of the other or they share a common ancestor. For the purpose of nepotism, an adopted child is considered to be a child of the adoptive parent(s). The degree of relationship by consanguinity may be determined by the following: (1) the number of generations between an individual and the individual’s ancestor; (2) the number of generations between an individual and the individual’s descendant; or (3) the total of the number of generations between an individual and the nearest ancestor of both the individual and the relative in question, plus the number of generations between that common ancestor and the relative in question.

“Employee,” for the purpose of this directive, is full-time, part-time, and temporary TDCJ employees and contract employees.

“Marriage” includes “ceremonial marriage” and “informal marriage,” which are the two types of marriage recognized by the State of Texas and are defined as follows:

“Ceremonial Marriage” is a marriage documented by: (1) a marriage license recorded with a county clerk; and (2) a marriage certificate issued by the county clerk.

“Informal Marriage” (previously referred to as common-law marriage) is a marriage that is not necessarily documented through a county clerk but is valid when a man and woman either sign and register a declaration of their marriage or perform all of the following: (1) agree to be married; (2) after the agreement, live together in the state of Texas as husband and wife; and (3) represent to others that they are married. An employee who claims to be married via an informal marriage for health insurance or any other benefit entitlement shall be considered to be married via informal marriage for the purpose of a nepotism violation.

“Nepotism” is the employment of relatives within the third degree by consanguinity or within the second degree by affinity.

“Relatives,” for the purpose of this directive, are individuals who are related by affinity (marriage) to the second degree or consanguinity (blood) to the third degree as indicated on the Nepotism Chart (Attachment A).

DISCUSSION:

The provisions within this directive are established in an attempt to prevent disruptions to the workplace. The employment of relatives in positions in which one relative is in the chain of supervision of another relative may result in a conflict of interest, may lower employees' morale by creating tension, disharmony, and perceptions of favoritism within the workplace, and may interfere with the ability of employees to effectively perform their duties.

PROCEDURES:

I. Nepotism

A. General Provisions

1. Employees shall report any nepotism violation or potential nepotism violation as soon as they are aware of such a violation or potential violation.
2. An applicant for employment or an employee who is applying for promotion or requesting a lateral transfer, voluntary demotion, shift change, or reassignment shall not be considered for any position resulting in a nepotism violation.
3. The selection or assignment of an individual to a position shall be voided if it is determined that either a supervisor or the selected or assigned individual knowingly violated the provisions of this directive.
4. An employee shall not participate in the selection of a supervisor for the employee's relative.
5. Adherence to the provisions within this directive shall be a stated or implied requirement for all contracts with the TDCJ. Contracting entities shall reassign a contract employee who is in violation of the provisions within this directive.

B. Nepotism Violations

1. Relatives of Texas Board of Criminal Justice (TBCJ) Members or the Executive Director

Except as provided by statute, the TDCJ may not employ a relative of a TBCJ member or a relative of the executive director.

2. Relatives of a Correctional Institutions Division (CID) Regional Director

Except as provided in Section III of this directive, an individual who is a relative of a CID regional director shall not be selected for or assigned to any position that is:

- a. Within the secured area of any unit located within the CID regional director's region of assignment; or
- b. A contract medical and treatment position, Windham position, or other position in the CID regional director's administrative or technical chain of supervision and located outside the secured area of such a unit.

3. Relatives of a Warden, Assistant Warden, or Major

Except as provided in Section III of this directive, an individual who is a relative to the warden, an assistant warden, or major shall not be selected for or assigned to any position that is:

- a. Within the secured area of the same unit; or
- b. A contract medical and treatment position, Windham position, or other position in the warden's, an assistant warden's, or major's administrative or technical chain of supervision and located outside the secured area of the unit.

The provisions in Sections I.B.2 and 3 do not apply to positions in tenant organizations located on unit property outside the secured area of the unit that are not in the CID regional director's or warden's administrative or technical chain of supervision, such as area maintenance or training academy positions.

4. Relatives in the Chain of Supervision for a Position

Except as provided in Section III of this directive, an individual shall not be selected for or assigned to a position:

- a. When the individual's relative is in the chain of supervision for the position; or
- b. If the selection of the individual would place the individual in the relative's chain of supervision for a position.

II. Resolution of a Nepotism Violation

The following procedures apply when a nepotism violation or potential nepotism violation occurs.

A. Action by Related Employees

When it is discovered that the work assignments of employees who are related to each other or who have become related by marriage are in violation of this directive, the warden or department head shall notify the affected employees in writing by completing a PERS 581, Notification of a Nepotism Violation (Attachment B). Within 90 calendar days from the date the notification is received, the related employees may resolve the matter by:

1. Requesting and receiving a lateral transfer, voluntary demotion, shift change, or reassignment;
2. Applying for and receiving a promotion; or
3. Taking other appropriate action to resolve the nepotism violation, such as voluntary resignation.

B. Action by Warden, Department Head, or Higher Level of Authority

If the related employees do not resolve the nepotism violation within the 90-day period, the warden, department head, or higher level of authority shall take action to resolve the violation. The needs of the TDCJ shall determine what action is to be taken to resolve the violation. This action may include administrative reassignment or realignment of functions.

The warden or department head shall initiate the action to be taken and submit the proposed action to the appropriate official for approval. If the warden, department head, or higher level of authority is one of the related employees, the next level of supervision shall initiate the action to be taken.

Administrative separation from employment shall be recommended only if no other solution is acceptable. If administrative separation from employment is necessary, the employee with the least seniority, calculated by total months of TDCJ employment, shall be administratively separated from employment. The employee shall be notified in writing of the approved action.

III. Exceptions

A. Employee Assignments Potentially Exempt from Nepotism Violation

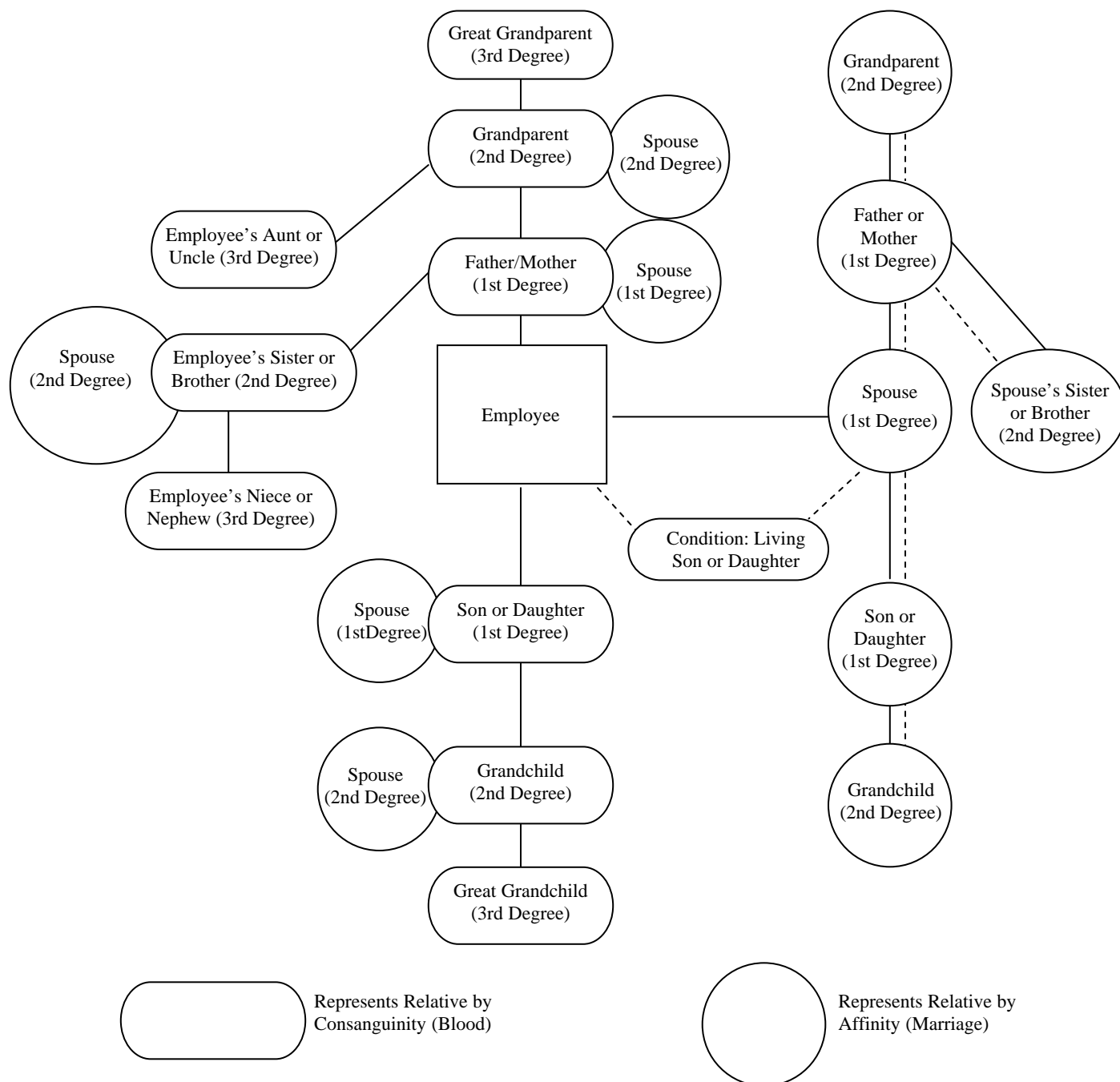
Employee assignments in effect on May 1, 1998 may be exempt from this directive provided the employees have not previously received a Nepotism Violation Notification, and each of the involved employees remains in the same position held on May 1, 1998. When relatives work at the same unit or department due to this exception, the warden or department head shall counsel the employees regarding appropriate work conduct. If documentation supports that the relationship has become problematic, the warden or department head shall implement procedures similar to the procedures for resolving a nepotism violation.

B. No Other Qualified Eligible Applicants

If there are no other qualified eligible applicants for a position, consideration may be given to a qualified applicant whose selection would result in a nepotism violation. However, prior to such employment consideration, the selection reviewer shall submit a decision memorandum (DM) requesting a nepotism exception through the chain of supervision for the position to the appropriate division director, deputy executive director, or executive director for approval. If the DM is approved, the original DM shall be filed in the employee's unit or department human resources file. A copy of the approved DM shall be attached to the TDCJ Payroll and Personnel System (PPS) Payroll Status Change Update (PSCUPD) screen print and filed in the selection packet.

Brad Livingston
Executive Director

TEXAS DEPARTMENT OF CRIMINAL JUSTICE Nepotism Chart



-----: Represents relationships ended by divorce or death. In cases where a marriage has ended by divorce, an employee continues to be related by affinity to the former spouse and the former spouse's relatives indicated on this chart as long as a natural or adopted child of the former marriage is living. In cases where a marriage has ended by death of a spouse, an employee continues to be related by affinity to the deceased spouse's relatives indicated on this chart as long as a natural or adopted child of the former marriage is living. If the employee remarries, these rules continue to apply for all former marriages.

Employees who claim to be married via a common-law marriage for health insurance or any other purpose shall be considered to be married via common-law marriage for the purpose of a nepotism violation.

The only step-relatives included on this chart are step-child, step-grandchild, step-parent, and step-grandparent.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
Notification of Nepotism Violation

Related Employees			
Supervisor	Name:		Birth Date:
	Please Print: Last	First	MI (mm/dd)
	Job Title:		Unit/Dept:
Subordinate Employee	Name:		Birth Date:
	Please Print: Last	First	MI (mm/dd)
	Job Title:		Unit/Dept:

In accordance with PD-26, "Nepotism," employees who are related shall not be assigned to positions where one is the immediate supervisor of or in the chain of supervision for the other. If an individual is a relative to a CID regional director, the individual shall not be assigned to any position that is: (1) within the secured area of any unit located within the CID regional director's region of assignment; or (b) a contract medical and treatment position, Windham position, or other position in the CID regional director's administrative or technical chain of supervision and located outside the secured area of such a unit.

In addition, if an individual is a relative to the warden, an assistant warden, or a major assigned to a unit, the individual shall not be assigned to any position that is: (1) within the secured area of the same unit; or (2) a contract medical and treatment position, Windham position, or other position in the warden's administrative or technical chain of supervision and located outside the secured area of the unit.

The work assignments for you and your relative are in violation of PD-26, "Nepotism." A job change is necessary to comply with the provisions of PD-26. You and your relative have 90 calendar days from the date you receive this notification to resolve this conflict by: (1) requesting and receiving a lateral transfer, voluntary demotion, shift change, or reassignment; (2) applying for and receiving a promotion; or (3) taking other appropriate action to resolve the violation, such as voluntary resignation.

If you and your relative do not resolve this conflict within 90 calendar days, the TDCJ shall resolve the matter by involuntarily transferring or administratively separating you or your relative. If an involuntary transfer is necessary, the needs of the TDCJ shall determine which individual shall be transferred. If no other solution is acceptable, the individual with the least seniority, calculated as total months of TDCJ employment, shall be used to determine which individual shall be administratively separated from employment.

Your cooperation is appreciated. Please provide me with a written notification of your decision by: _____
 (mm/dd/yyyy)

If you have any questions, please contact me or your human resources representative.

Warden/Department Head:

 Printed Name and Title

 Signature and Date (mm/dd/yyyy)

Employee's Acknowledgement of Receipt:

I acknowledge receipt of this notification, and I understand the actions that are required to resolve the nepotism violation.

 Printed Name

 Signature and Date (mm/dd/yyyy)

Note to Employee: With few exceptions, you are entitled upon request: (1) to be informed about the information the TDCJ collects about you; and (2) under Texas Government Code §§ 552.021 and 552.023, to receive and review the collected information. Under Texas Government Code § 559.004, you are also entitled to request, in accordance with TDCJ procedures, that incorrect information the TDCJ has collected about you be corrected.